Supreme Court, U. S.
FILED
APR 11 1977
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1976

No. 76-1330

John Doe,

Petitioner,

v.

E. E. Pringle, D. E. Kelley, R. E. Lee, J. R. Carrigan, J. K. Groves, P. V. Hodges, and W. H. Erickson, individually and in their capacities as Justices of the Colorado Supreme Court,

Respondents.

SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORATI

JONATHON B. CHASE
University of Colorado
School of Law
Boulder, CO 80309
(303) 492-8428
COUNSEL FOR PETITIONER

OF COUNSEL:
Albert T. Frantz
7180 West 14th Ave.
Englewood, Colorado

In The

Supreme Court of the United States

No. 76-1330

JOHN DOE,

Petitioner,

v.

E. E. PRINGLE, D. E. KELLEY, R. E. LEE, J. R. CARRIGAN, J. K. GROVES, P. V. HODGES, and W. H. ERICKSON, individually and in their capacities as Justices of the Colorado Supreme Court,

Respondents.

SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

Petitioner, pursuant to Rule 24 of the Supreme Court Rules, hereby files his Supplemental Brief In Support of his Petition For Writ of Certiorari in order to call the attention of the Court to the case of Getty v. Reed, 547 F.2d 971 (6th Cir. 1977), the report of which was not available for inclusion in the Petition For Writ of Certiorari, docketed on March 26, 1977.

THE DECISION OF THE COURT OF APPEALS FOR THE TENTH CIRCUIT CONFLICTS WITH THE DECISION OF THE COURT OF APPEALS FOR THE SIXTH CIRCUIT IN GETTY V. REED, 547 F.2d 971 (1977).

Getty v. Reed, 547 F.2d 971 (6th Cir. 1977), involved appeals from two federal district court decisions denying subject matter jurisdiction over suits brought pursuant to 42 U.S.C. §1983 (1970) to enjoin the imposition of discipline by the then Kentucky Court of Appeals. In Collis v. Reed, 413 F. Supp. 507 (E.D.Ky. 1976), plaintiff claimed that the rules used in the proceedings culminating in his disbarment were unconstitutional. In Getty v. Reed, 413 F. Supp. 511 (E.D.Ky. 1976), in addition to challenging the rules, plaintiff also claimed that the conduct which was the basis for his suspension was speech protected under the first and fourteenth amendments. In both cases, specifically because these federal issues had been presented to and rejected by the Kentucky Court of Appeals, the federal district court found that it lacked subject matter jurisdiction under Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923), since plaintiffs were essentially attempting to relitigate in federal court issues already passed upon on the merits in state court. 413 F. Supp. at 509-10, 514-15. The district court in both cases also relied on Tang v. Appellate Division of the New York Supreme Court, First Department, 487 F.2d 138 (2d Cir. 1973), cert. denied, 416 U.S. 906 (1974), discussed in the Petition for Writ of Certiorari, at 17-21.

On appeal the United States Court of Appeals for the Sixth Circuit rejected the determination of the federal district court and found subject matter jurisdiction in both cases. It nevertheless affirmed dismissal of Collis since the procedures challenged had previously been upheld on the merits in another Sixth Circuit decision. The decision in Getty, however, was reversed, since, in addition to challenging the rules, Getty had also raised a first amendment claim.

In reversing the decision of the district court, the Sixth Circuit, 547 F.2d at 976, distinguished Rooker v. Fidelity Trust Co., supra, and found, 547 F.2d at 975, the decision of Judge Oakes, dissenting in Tang v. Appellate Division of The Supreme Court, First Department, supra, most persuasive. On remand, in addition to considering the merits of Getty's first amendment claims, the district court can also entertain a plea of res judicata if raised by defendants as an affirmative defense. See 547 F.2d at 975.

Although the decision of the Sixth Circuit in Getty is directly contrary to the decision of the Tenth Circuit in the case at bar, it also goes substantially further in finding subject matter jurisdiction than Petitioner has urged herein. As indicated in his Petition for Writ of Certiorari, at 14-16, 17-21, Petitioner has been willing to concede that presenting federal claims to a state court will thereafter preclude seeking collateral review of their rejection in a federal district court, at least where the choice of forum in which to litigate the federal issues was actually selected by the person asserting the federal claims, as the majority construed the actions of the plain-

tiff in Tang v. Appellate Division of the Supreme Court, First Department, supra. Compare Thistlethwaite v. City of New York, 497 F.2d 339 (2d Cir.), cert. denied, 419 U.S. 1093 (1974).

Notwithstanding the fact that Getty may go too far in asserting the existence of subject matter jurisdiction in cases seeking federal review of state court supervision of the practice of law, the conflict between the Sixth and Tenth Circuits on this issue underscores the recognition in Getty for the need for Supreme Court clarification in this area. The court in Getty noted, at 975, as follows:

> If what we have said thus far suggests that the District Judge who held he had "no jurisdiction" to try this case simply missed the signs on a well marked trial [sic], we hasten to acknowledge that no such thing is true. One commentator . . . has noted that the Supreme Court has given no guidance as to claim preclusion by final state court decision in §1983 cases and added that as a result "The decisions of the lower courts teem with inconsistencies." . . . Theis, Res Judicata in Civil Rights Act Cases: An Introduction to the Problem, 70 Nw.U.L.Rev. 859, 865-66 & n. 35 (1976).

For the reasons above-stated and those previously asserted in the Petition For Writ of Certiorari, Petitioner respectfully requests the Court to grant his Petition For Writ of Certiorari.

Respectfully submitted,

Jonathon B. Chase
University of Colorado
School of Law
Boulder, CO 80309
COUNSEL FOR PETITIONER

OF COUNSEL:

Albert T. Frantz
7180 West 14th Avenue
Englewood, Colorado